CHAPTER 15

ECONOMIC DEVELOPMENT

I. INTRODUCTION.

This chapter offers additional information to Economic Development (ED) grantees to assist you in complying with the overlay and reporting requirements

II. GRANTEE RESPONSIBILITIES

This section covers the following topic areas related to your ED grant:

A. Defining roles

B. Verifying public benefit and national objective requirements

C. Monitoring subrecipients

D. Liability for job creation

E. Loan agreements

F. Pro rata disbursements

G. Reuse plan for fair share payments

H. Financial information and documentation

I. Close-out

A. Defining roles.

Scheduling a meeting for defining roles and assigning responsibilities to all program participants is important to the first task of fulfilling special conditions. We recommend that shortly after your contract takes effect you schedule a meeting of the CDBG program's ED representative, the local staff person or consultant who will be handling the day-to-day administration of the grant and/or implementation of the business assistance or microenterprise assistance program, your Executive Officer who will be receiving and reviewing the State's monitoring and auditing reports, the financial officer who will prepare periodic or semi-annual financial reports, the job training agency representative who will be responsible for recruitment, job training and income verification of job applicants and employees, the labor standards coordinator who will be reviewing payrolls for Federal prevailing wage compliance and, if appropriate, your engineer who will oversee the construction of off-site publicly owned infrastructure improvements.

The ED representative will review the overlay and reporting requirements and assist you with developing a timeline for satisfying the special conditions listed in your contract.

B. Verifying Public Benefit and National Objective Requirements

The intent of the ED allocation is to provide ***public benefit*** by creating or retaining permanent private sector jobs. A single job counts as a permanent, full-time job if it provides at least 1,750 hours of employment during the year. Permanent part-time jobs can be aggregated into full-time equivalent jobs if the part-time job provides at least 875 hours of employment per year. These permanent part-time jobs can be aggregated into 1,750 hour full-time equivalent jobs (FTEs). A fraction of a job, (e.g., .5 of a FTE job) does not count towards meeting the public benefit requirement which specifies that not more than $35,000 of CDBG funds can be used for each FTE job created as a result of the CDBG assistance.

Note: Jobs held by family members with an ownership interest in the business will not typically count towards the job goal. Self-proprietorships and owners/principals of companies are not typically counted either. However, where CDBG funds assist a qualified micro-enterprise (i.e., five or fewer employees, one of whom is the owner of the business), the owner's job will be counted toward the job creation goal where the CDBG assistance enables an existing income-producing sideline activity to become the person's principal activity. The business owner's job may be counted towards meeting the TIG benefit goal if the owner is income eligible.

Seasonal jobs (e.g., jobs at a vegetable packing plant) may be considered to be permanent jobs only if the duration of the season is long enough for the job to be considered as the person's principal occupation. The job should last more than six months and represent the person's principal source of work-related income.

Each activity must also meet one of the CDBG program's ***national objectives***. Generally, CDBG economic development projects meet the national objective of principally benefiting low- and moderate-income persons (members of the Targeted Income Group also known as TIG) by filling at least 51% of the jobs created or retained by the CDBG assistance with members of the program's Targeted Income Group. Therefore, income verification is an on-going grantee responsibility of major importance and the mechanism for verification must have State approval.

You must maintain records which verify the number of TIG families benefiting from the jobs created or retained by the CDBG-assisted project. Keep records which demonstrate one of the following:

- The person filling the job has been qualified under a government assistance program with income eligibility requirements not to exceed HUD income eligibility requirements;

- A self-certification from the person filling the job. Additionally, maintain documentation that at least one-third of these job-holders' incomes have been verified as members of the Targeted Income Group;

- The person filling the job was referred from an agency that utilized the HUD income limits in determining that person's TIG eligibility.

Note that the Department will not accept the salary level of the job as evidence that a job is held by a TIG employee. Each employee's total family income must be calculated and then compared to the HUD income eligibility levels per county (see Appendix D) to establish TIG eligibility.

1. Job creation projects. You must ensure that the business either agrees to obtain and keep on file documentation of income verification or agrees to utilize referrals from a qualified job referral agency. Referrals may be from a state, county or local employment agency or other entity that agrees to refer individuals who are screened for income eligibility. The CDBG program requires that 100 percent of the TIG beneficiaries' incomes shall be verifiable. The program utilizes annual income eligibility limits by county published by the Department of Housing and Urban Development (see Appendix D). However, the CDBG program will accept the Jobs Training Partnership Act (JTPA) definition of ***income*** eligibility in lieu of HUD income guidelines.

   Businesses may use one of two screening approaches described below. In any event, documentation must be available in your files for State inspection during any monitoring visit and for three years after your grant contract expiration.

   a. The ideal income verification is a screening by a job referral entity of family income prior to hiring for job creation and retention projects. The income screening and referrals of income-qualified persons can be conducted by the locality, or a state, county, or local job employment agency or other entity that agrees to refer individuals who they determine to be members of the TIG based on the CDBG program's income limits adjusted for family size.

   b. For job creation projects, if the business hires employees without prior job referral agency income screening, an approved self-certification must be completed indicating family income. This form must be signed and dated by the employee and the certification form must include a statement that that person's family income is below that required to be a member of the TIG. In addition, the form must include a statement, signed by the applicant, that the information is subject to verification by authorized state and Federal government officials. After hiring, a representative sampling of employees' income self-certifications must be verified through income documentation.

2. Job retention projects. For a proposal to be considered as a job retention project, the business must have provided evidence that it faced imminent closure. It must be clearly and objectively demonstrated that without CDBG assistance, the jobs will be lost. Acceptable examples of clear and objective evidence include: a notice issued by the business to affected employees; a public announcement by the business (e.g., a press release or letter to the jurisdiction), or financial records provided by the business that clearly demonstrate the need for closing or moving all or portions of the business out of the area or that without financial assistance the business will not be able to sustain itself. If 51 percent of the current workforce is in the TIG and CDBG funds will prevent business failure, the project qualifies as job retention.

   An income survey of existing employees must document that CDBG funds are retaining jobs which are principally held (51 percent) by TIG employees. Signed self-certification forms (that are verifiable) must be completed for each retained employee documenting family income. The income determination for retained employees is to be made when CDBG funds are being requested and prior to any decision to provide CDBG assistance.

   Alternatively, if the current workforce demonstrates less than 51 percent TIG benefit, the proposal may still be eligible if it can be demonstrated that, based on historical data, the anticipated job turnover during the grant term will result in job opportunities for TIG. The combined retained TIG jobs and those filled by TIG through job turnover over the next 30 months may qualify the project as eligible for CDBG funds.

3. Infrastructure projects. If you provide assistance in the form of off-site improvements to a facility such as a shopping center, small business incubator, or office building, where space will be leased to more than one individual business, the TIG benefit test (51 percent of all new jobs) will be applied to the development as a whole.

   To ensure that the purpose of CDBG funds is understood by the private business entity, you should make TIG job creation a specific covenant of such documents as the Fair Share Allocation Agreement (see the example of a Fair Share Agreement in the "Supporting Materials" section of this chapter), a business loan, Owner Participation Agreement, Development and Disposition Agreement, or lease agreement.

   You should require TIG job creation as a condition of assistance to the developer. In turn, a developer should inform lessees of this through the covenants of the lease with remedies or penalties established for failure to satisfy the covenant.

Where CDBG funds are for infrastructure in support of a business, but excess capacity is available to future users, the TIG benefit test and national objective requirements shall also be applied to future users if the projected cost per job in CDBG funds is $10,000 or more. You must determine the service area of the infrastructure improvements and develop and implement a mechanism for identifying businesses that locate or expand within the service area and for tracking job creation and TIG benefit for these businesses for the period from the date that the CDBG assistance is approved to the date one year after the physical completion of the public infrastructure improvements. As such, the reporting requirements for tracking job creation and TIG benefit may extend beyond the grant agreement. In addition, these new businesses or business expansion projects are subject to the public benefit requirements which restrict the amount of CDBG subsidy allowed to a maximum of $35,000 of CDBG funds per job created or retained.

For projects where the projected costs per job for the initially benefiting business(es) is less than $10,000, then the TIG benefit requirement (minimum 51% benefit to TIG) shall be determined from the jobs created or retained by the initially benefiting businesses.

4. Monitoring. The Department typically monitors your ED program for job creation/retention performance approximately twenty-four months from the date that your State contract is executed.

The job creation or benefit files should contain all documentation on job creation including referrals, income verification, hire dates, information on minority and women hires, and the Employment and Procurement Plan and Employment Agreement.

If the TIG benefit file is kept by the business or the job training agency at another location, you should make sure that a TIG benefit file is maintained at your location, too.

(See Chapter 7 for recommendations on record keeping and Chapter 12 for more on the Department's monitoring process.)

C. Monitoring subrecipients. In some instances you will enter into an agreement with a subrecipient such as an economic development corporation to implement CDBG-funded activities. Although the grant has been passed through to a subrecipient, it is your responsibility to monitor subrecipient performance and to ensure that all aspects of the grant program are carried out in accordance with applicable laws and regulations. You should keep records of on-site visits to subrecipients and should notify the Department if subrecipients are having difficulties complying with program requirements.

You must have effective systems to account for all funds, property and other assets administered by the subrecipient. An agreement is mandatory between you and the subrecipient regarding administrative and programmatic obligations during the grant term, and during post-grant years. The agreement should specify agreements regarding disposition of program income and CDBG-financed properties.

If as a result of monitoring, audits or investigations, it is found that a subrecipient is not conducting its responsibilities in an appropriate or competent manner, it is your responsibility to remedy the problem(s). Your failure to monitor a subrecipient may result in monitoring findings that affect your jurisdiction's performance rating and eligibility for future CDBG grants.

D. **Liability for job creation**. An economic development block grant is a partnership between the State, a local jurisdiction and the benefiting business to create or retain jobs. If the business performs well and fulfills the job goals described in the application, your performance rating is secured. However, should the business fail to achieve job goals, your performance suffers and may jeopardize your ability to apply for future CDBG grants. It can also result in your having to repay a portion or all of the program income generated by the subject grant, or repayment of a portion or all of the grant amount.

E. **Loan agreements**. You are advised to inform your business beneficiaries that a CDBG business loan carries additional requirements beyond timely loan repayments, namely, the responsibility to create jobs. All loan agreements should have a non-monetary default clause that says the borrower is in default if job creation or retention obligations are not met. The loan agreement should specifically reference, as a minimum performance requirement, the total and TIG job count described in the approved application. Note: If the business creates more jobs than originally projected in the application and/or specified in the State agreement, then, to meet the national objective of principally benefitting TIG members, at least 51% of all jobs created must benefit members of the TIG.

An explicit clause regarding the business' responsibility for meeting job creation or retention and TIG benefit performance standards should be made part of any development or lease agreement between the jurisdiction and any business benefitting from a CDBG-assisted project. You should ensure that developers incorporate job creation/retention and TIG benefit reporting requirements in lease agreements between CDBG-assisted developers and their tenants.

You may indemnify your jurisdiction against poor job performance through corporate guarantees, personal guarantees, etc.

A standard covenant of all CDBG funded loans is that they are due and payable upon sale or refinance or change of majority ownership. CDBG funded loans are not assumable.

F. **Pro rata disbursement**. To the extent possible, you should structure project financing so that equity and private leverage are injected into the project prior to CDBG funding, or at a minimum, concurrently inject CDBG funds along with the other funding sources. If CDBG funds must be used first, you must carefully monitor the project to see that all other committed funds are used to complete the project.

G. **Reuse plan for fair share payments**. It is the intent of the CDBG program to fund only infrastructure improvements that are necessary for the identified business to go forward. However, infrastructure may be sized for excess capacity so that future users will be able to hook up. Applicants are required to negotiate for fair share contributions from businesses and landowners that will benefit from the CDBG-assisted project. Fair share payments are distinct from ongoing operating fees; they are intended to capitalize a fund for CDBG eligible activities similar to the reuse of loan repayments. A fair share plan should be included in every application for infrastructure improvements describing the amount of the fair share payment allocable to each benefiting business and property owner and the mechanism that will be used to collect fair share payments from future users. Initial fair share payments contributed by the initially benefiting business(es) will be the result of negotiations between your jurisdiction and the benefiting businesses and property owners.

H. **Financial information and documentation**. The financial gap documentation file should contain all confidential information submitted to substantiate the need for CDBG funding, including the basis for determining that the amount and terms of the CDBG assistance are appropriate, given the documented financial needs of the business and the public benefit that will result from the project. The credit analysis and historical financial information, personal financial information, pro forma financial information with assumptions, and the business and marketing plans should remain confidential. This information should be kept in a locked file and is not typically made available for public review. Any request for this information, or other information related to the use of CDBG funds, should be reviewed with the jurisdiction's legal counsel for conformity with the Public Information Act. (See Chapter 7 for more information on filing systems.)

The Department will review these files during its monitoring visits. You must be able to document that the private leverage commitments of equity and debt have been fulfilled. Additionally, all CDBG expenditures must be documented.

The Department will require evidence that you have submitted the annual Program Income (PI) Reports to the Department and have adopted a Department-approved PI Reuse Plan that describes proposed reuses of PI. Residents of the jurisdiction must be provided an opportunity to comment on the Reuse Plan's proposed uses of PI annually. In addition, you should have local program guidelines and procedures that ensure that CDBG funds are expended for eligible activities and that all CDBG requirements are met. You must have a financial tracking system that accounts for the collection and expenditure of loan and/or fair share payments in accordance with the Department approved PI Reuse Plan.

I. **Close-out**. Upon close-out monitoring, and not prior to the 24th month of the grant agreement, the Department will review your program for compliance with such items as follows (see Chapters 12 and 13 also):

1. Each CDBG-assisted project (e.g., each loan to a business) must meet a national objective. If the national objective being met by a project is to principally benefit the TIG, then 51 percent of the actual jobs created or retained must be filled by TIG persons.

2. Private leverage has been documented and expended.

3. CDBG funds have been expended for the purpose described in the application and drawdown requests.

4. You have reported on a timely basis, and have no outstanding monitoring or audit findings.

5. Cost per job created/retained is consistent with the original grant application and staff report and, at minimum, meets Federal public benefit requirements.

If the above criteria are met and you have complied with all CDBG Federal overlay requirements, the grant can be closed out. The retention of PI will be affected by job performance. It is possible that a grant may close out but not be allowed to retain program income. For example, if the CDBG-assisted project fails to create or retain jobs such that the cost per job (in CDBG dollars) is less than the maximum allowable costs per job, then you will be required to return PI in the amount of the excessive subsidy.

III. COMMON PROBLEMS

- Failure to inform the CDBG program representative of project complications

- Absence of loan tracking system

- Using salary level of the job rather than verifying family income as evidence of TIG benefit

- Failure to monitor job creation/retention on a periodic basis

- Failure to document an impending job loss in job retention projects
- Failure to perform follow-up income screening for job retention projects
- Failure to document total project costs at completion
- Failure to document equity injection
- Failure to document need for draws on CDBG loan prior to disbursal
- Failure to oversee subrecipients
- Inadequate documentation to support borrower's request for funds
- Inadequate documentation of loan/credit files.

IV. <u>DEPARTMENT'S ROLE</u>. The Department has an ED unit within the overall CDBG Program. ED representatives are responsible for providing technical assistance to ED grantees throughout the life of the grant.

The ED representative will conduct monitoring site visits to review your files, interview the staff and any contractors who have a role in the project, and provide technical assistance on compliance problems. A programmatic goal is that each ED grant will be monitored twice. The monitoring visits will cover all Federal overlay requirements, CDBG project costs, private leverage and jobs.

For loans made from an Enterprise Fund grant, be aware of differences in the approval and drawdown procedures for CDBG compliance. For loan amounts less than $50,000 in CDBG funds, the Department will review the project and all required financial and overlay documentation at the point of monitoring.

For loans involving more than $50,000 in CDBG funds, the Department provides grantees with a checklist of items which includes a copy of the grantee's financial feasibility analysis for the proposed project. You are reminded that no CDBG costs may be incurred prior to written authorization from the Department.

During the close-out evaluation, the Department will compare your performance to the factors listed above to determine grant achievement. The Department will consider your overall performance in its evaluation of the percentage of program income that may be retained locally. Since your ability to retain program income is a function of a final evaluation, the Department will allow you to retain any program income realized during the term of the grant which generates the income.

V. <u>REFERENCES</u>.

- State CDBG Regulations, Section 7062.1, describes eligibility criteria and procedures for reviewing an application for funding under any of the program components authorized under the Economic Development Allocation of the State Small Cities CDBG Program

- Federal Statute, Section 104(b)(3), requires every economic development grant to meet a national objective: 1) benefit to low-and-moderate income persons; 2) elimination of slums and blight; 3) meeting an urgent community need.

- 24 CFR 570.483(b)(4), and Statute Section 105(c)(1)(C) of the HCD Act of 1974, state that an assisted economic activity principally benefits TIG persons through new or retained jobs.

- 24 CFR 570.483(b)(4), specifies standards by which a job creation or retention activity meets the national objective of principally benefitting TIG persons.

- Federal Statute, 105(a)(17) of the HCD Act of 1974 and 24 CFR 570.482(e), requires that the state and/or local grantees conduct basic financial underwriting prior to the provision of financial assistance to a for-profit business. This analysis supports an "appropriate" determination be made whenever CDBG assistance is provided directly to a for-profit business for an economic development project (e.g., a loan to a business or a grant for infrastructure improvements needed to accommodate a business retention or expansion project.) The purpose is to ensure that the amount of financial assistance provided to a for-profit business is not excessive, taking into account both the actual needs of the business and the extent of public benefit (i.e., number of jobs that will be created or retained) expected to be derived from the economic development project.

- 24 CFR 570.482(f), require that at least a minimum level of public benefit in the form of job creation or job retention is obtained when CDBG assistance is provided to economic development projects.

- 24 CFR 570.506 specifies the grantee's record keeping requirements (e.g., documentation and agreements needed to support a determination of TIG benefit for job creation and retention projects.)

- 24 CFR 85.40 requires that grantees monitor performance of CDBG-supported activities to assure that time schedules are being met, quarterly work units (i.e. jobs) are being filled, and other performance goals are being achieved.

- 24 CFR 85.20 requires that recipient and subrecipient financial management systems provide for accurate, current and complete disclosure of the financial transactions relating to the grant, including collection and expenditure of program income.

- 24 CFR 85.36 requires that construction contracts and contracts for professional services be awarded pursuant to an open bid process or competitive negotiation.

VI. SUPPORTING MATERIALS

- Development Project Lease Conditions for TIG Hires (Sample)
- Employment Agreement (Model)
- Employment and Procurement Plan (Suggested Outline)
- Employment Projection (Form)
- Evaluating a CDBG Economic Development Project (Guidelines and Objectives)
- Fair Share Allocation Agreement
- Loan Agreement (Sample)
- Loan Agreement (Suggested Outline)
- Loan File (Suggested Outline)
- Loan File Documents (Description)
- Self Certification Form for Family Income (Form & Instructions)
- Small Business, Minority, Women or Disabled Veteran-owned Businesses (Form/Sample)

DEVELOPMENT PROJECT LEASE CONDITIONS FOR TIG HIRES

1. It is hereby understood and agreed by Tenant that Landlord has made no warranty or representation as to the present condition of, or suitability of the Premises for Tenant's intended use or uses.

2. Tenant understands that Landlord has entered into a financing agreement with the ______________________ and the State of California to construct the premises. A condition of that financing is the provision of employment for TIG residents. In order to attain these goals and the goals of the project in general, Tenant hereby agrees as follows:

a. Tenant shall provide financial information including, but not limited to a balance sheet and profit/loss statement, prepared in accordance with generally accepted accounting principles, every six months during the term of this lease. The first such reporting shall be due not less than eight months following the commencement of the Lease Term. If Tenant is in default of its obligation to pay rent, Tenant shall make books, records and other financial information available to Landlord for review during business hours.

b. Tenant shall provide, at the beginning of the Term, a statement of current employment and projected employment figures for the Term of this Lease. Thereafter, on a quarterly basis, Tenant shall provide to Landlord's designated agent a written report of its progress in meeting employment projections.

c. Tenant will execute a First Source Hiring Agreement satisfactory to the __________________________. This agreement shall provide that Tenant will use its best efforts to recruit and utilize employee referrals meeting the Targeted Income Group (TIG) standards. A copy of the First Source Hiring Agreement is attached as Addendum 2, and is a part of this Lease by reference.

d. Tenant shall comply with all provisions hereof and ordinances and other laws against unlawful discrimination on account of race, creed, sex, age disability, or color. This Lease is subject to Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and the rules and regulations issued pursuant thereto, and the Tenant shall comply with Executive Order No. 11246, entitled, "Equal Employment Opportunity", as supplement in Department of Labor Regulations(4 CFR, Part 60).

e. Tenant shall use its best efforts to locate any future corporate offices and/or related office or manufacturing or warehouse facilities in the same structure or structures within the Premises. Upon graduation from the incubator facility, Tenant will, if adequate space is available, locate within the County limits of _______________________. Landlord, through its agent __________________ City/County Development Corporation, will assist in new site location at no charge to Tenant.

f. Tenant understands that this Lease, the demised premises and the additional services provided are designed to provide space for emerging businesses. Once the business has reach a stage where such services are no longer required, or growth dictates a need for more space, it is expected that the business will relocate to another facility within the County/City. Tenant and Landlord will review the progress of the business annually and mutually agree upon a "graduation" date from the Incubator.

g. Tenant agrees that specific rules regarding outside area maintenance, employee parking, and traffic control may be promulgated by Landlord for the benefit of all Tenants. Tenant further agrees to abide by these rules.

h. In the event Tenant changes the nature of the business. For example, from a sole proprietorship to a corporation, then the existing Lease shall be terminated upon a written notice from Tenant and a new lease made in the name of the new business entity. Such lease shall be executed based substantially on the terms and conditions contained herein.

Note: Grantees are advised of their potential liability regarding job creation and benefit to the TIG. Grantees may want to develop specific remedies applicable to the tenant where there are instances of non-compliance or non-performance.

MODEL EMPLOYMENT AGREEMENT

The following is a suggested format for jurisdictions intending to contract for placement and/or training services. However, the requirements contained within the agreement should be included in any contract for these services.

The State CDBG Program will allow jurisdictions to use JTPA funded agency definitions of income eligibility when there is a contract with a JTPA funded agency. It is important to note that most JTPA funded agencies do not require 100 percent verification of the income eligibility of applicants who are placed. The CDBG Program does require 100 percent verification of hires for the first 50 TIG jobs and 50 percent verification beyond that number. Therefore, CDBG administrative costs may be budgeted to include funds for JTPA services performed for 100 percent verification.

If a JTPA agency does not income screen applicants, the definition of Targeted Income Group eligibility is determined by using HUD Income Eligibility limits per county and per family size for the current year (see Appendix D). The Department will define household income as family income: all sources of income for one or more persons living in a single residence who are related by blood or marriage.

AGREEMENT

The City of ABC (the City) and XYZ Private Industry Council (XYZ-PIC) and Business X agree to the following terms and conditions relating to Grant Number _______________ also known as the ABC Main Street Plaza Project.

1. XYZ-PIC will work with each business identified in grant # __________________ to determine employment and training needs and to assist the businesses, identified in # ______________________ in utilizing various on-the-job training programs and job tax credits.

2. The following community organizations will be contacted by XYZ-PIC regarding job opportunities created by grant # ______________________.

   --Department of Rehabilitation
   --All Valley College
   --Regional Occupational Program
   --Employment Development Department
   --Department of Human Resources
   --All Valley Opportunity Center
   --Veteran's Services
   --Area Agency on Aging
   --Refugee Services

3. XYZ-PIC, in coordination with Business X and the City, will utilize any or all of the following

methods to advertise job opportunities generated from grant # ______________________________.

--Press Releases
--Newspaper Ads
--Posters
--Flyers
--Radio
--Chambers of Commerce

4. The XYZ-PIC recruiting office will work closely with the Employment Development Department, the City and All Valley College in developing job recruiting efforts for grant # ______________________.

5. The City will be responsible for monitoring the contract between the business and the PIC and shall be responsible for insuring that at least 51% of all jobs created or retained as a result of the CDBG assistance are filled by members of the CDBG program's targeted income group (TIG).

6. XYZ-PIC will collect and maintain client characteristic data relating to JTPA clients employed through the ABC Main Street Plaza Project. This data will be provided on a regular basis to the City, per the reporting schedule in Attachment #2.

7. The XYZ-PIC will maintain a recruitment file on all grant # ____________________ related activities and that file will be available to the City upon request.

8. XYZ-PIC shall assist employers in recruiting, screening and/or referring eligible applicants for employment. Eligible applicants are defined as being eligible for the JTPA Program.

9. ABC shall work cooperatively with XYZ to provide employment data and allow access to its place of business for purpose of carrying out its responsibilities described herein.

10. Compensation for income screening and employee training services is set forth using attachment which details unit costs for publicity, eligibility screening referral, training, etc. The maximum amount to be paid shall not exceed the total of all unit costs in payment detail.

11. ABC shall notify XYZ PIC in writing _______ working days in advance of actual need for employees to permit adequate time to solicit and refer suitable job applicants.

This agreement shall take effect when it has been executed by authorized representatives from all parties, and shall be in effect for a term of two years following completion of the ABC Main Street Plaza.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year dated below.

XYZ-PRIVATE INDUSTRY COUNCIL	City of ABC
By: ______________________________	By: _________________________
Date: ____________________________	Date: _______________________

Business X

By: ________________

Date: _______________

Attachment

CDBGGMM.9/99

Attachment

Payment Detail
FOR AGREEMENTS WITH A JTPA FUNDED AGENCY

Forms Development/Modification: $__________

+

PUBLICITY/RECRUITMENT:______ @ $__________ ea.

ELIGIBILITY SCREENING:______ @ $__________ ea.

REFERRAL: ________ @ $____________ ea.

PLACEMENT/TRAINING (optional): _______ @ $_________ ea.

OTHER $__________

+

TOTAL $___________

MAXIMUM NUMBER OF REFERRALS __________________

FLAT FEE PER REFERRAL $____________ ea.

MAXIMUM AMOUNT TO BE PAID UNDER THIS AGREEMENT $________

EMPLOYMENT AND PROCUREMENT PLAN- SUGGESTED OUTLINE

Employment and procurement plans are used to assure that the private entity benefitting from CDBG financing is committed to hiring members of the targeted income group and to the procurement objectives of the program. The plan should be prepared jointly by the grantee and the business, and be signed by the grantee, business and screening agency, and incorporated by reference into any loan agreement, development and disposition agreement, etc. The following outlines what should be included in the plan.

I. EMPLOYMENT

A. Anticipated Employment

1. Number of new or retained jobs consistent with the application's Employment Projection form and including baseline employment figures as of the date of the application and projected new employment (include employment projection form and updated budget and milestones forms)

2. Number of jobs to be filled by members of targeted income group families

3. Skill levels

4. Basis for estimates, such as market research, past performance, industry standards, etc.

5. Commitment to take the specific steps to train, recruit, and hire minorities and women found in the company's Affirmative Action Plan and Sections B and C of this plan

B. Employment Training

1. A letter of intent from the agency to work with the business or developer to determine employment and training needs and to assist the business in utilizing various on-the-job training and tax credit programs

2. A commitment that pursuant to the grant agreement, the grantee and business will immediately notify the appropriate training and referral agency when jobs are available, or:

3. Actual training agreements developed pursuant to B.1. above

C. Recruitment and Placement

1. A list of community organizations, such as minority, handicapped, or women's groups, work training centers, senior citizen organizations and veterans' groups which will be contacted for recruitment

2. The specific methods of advertising

3. Recruitment agency agreements and commitment to use the services of the Private Industry Council, Employment Development Department, or GAIN Program

D. Monitoring

1. The person or agencies who will be responsible for job monitoring

2. The method to be used to verify the prior income of new employees, such as income tax returns, wage stubs, and subsidy payments

3. The method for on-going monitoring to assure job classifications remain on-line for a two-year period

II. CONTRACTS AND PROCUREMENT

A. Selection method: Jurisdiction's procurement procedures for selecting contractors, subcontractors and vendors for CDBG-funded work, equipment and supplies. Describe:

1. When a competitive bid process will be utilized

2. Whether previously utilized contractors will be doing the work under a sole source contract

3. Whether local, minority, women or disabled veteran-owned contractors or vendors will be solicited

B. Recruitment: Method of informing qualified local, minority, women owned and disabled veteran owned businesses of contracting opportunities, such as through Local Builders Exchange for local contractors, Caltrans District Office for qualified minority and women contractors, local Veterans Affairs organizations

C. Monitoring and reporting

Establishing a reporting system to collect information from businesses regarding contractors chosen, and the relevant characteristics of those firms (i.e., minority, women, disabled veteran). Describe frequency, format, and responsible parties.

EMPLOYMENT PROJECTION FORM

NOTE: This form must be filled out for each business and signed by an authorized business representative.

1. Company Name ______________________________

2. Current workforce as of date of application: ______________________________ (Date)

3. Job Information for created or retained jobs.

		Number of Jobs		TIG
Classification/Title (Created = [C] or Retained = [R])	Wage	Full-time	Part-time	Y N
	(Please note whether wage is based on hour, month, or year)	(Minimum 1,750 hours per year)	(Minimum 875 hours per year)	
TOTAL				

4. Number of "full-time equivalent" jobs. __________ (A full-time equivalent" job is two part-time jobs each a minimum of 875 hours/year, that equals one full-time job of at least 1,750 hours/year.)

CDBGGMM.9/99

EVALUATING A CDBG ECONOMIC DEVELOPMENT PROJECT GUIDELINES AND OBJECTIVES

HUD requires that the state or local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a business. HUD has developed guidelines that are designed to provide grantees with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. The State CDBG program requires that these HUD underwriting guidelines be utilized to determine whether a proposed CDBG subsidy is appropriate to assist a business expansion or retention project. In addition, the project must be reviewed to determine that a minimum level of public benefit will be obtained from the expenditure of the CDBG funds in support of the project.

HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and, in the case of a microenterprise or other small business, to take into account the differences in the capacity and level of sophistication among businesses of differing sizes.

The objectives of the underwriting guidelines are to ensure that:

1. project costs are reasonable;
2. all sources of project financing are committed;
3. to the extent practicable, CDBG funds are not substituted for non-Federal financial support;
4. the project is financially feasible;
5. to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
6. to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

Project Costs are Reasonable. Reviewing costs for reasonableness is important to help avoid providing either too much or too little CDBG assistance for the proposed project. Therefore, it is suggested that the grantee obtain a breakdown of all project costs and that each cost element making up the project be reviewed for reasonableness. The amount of time and resources expended evaluating the reasonableness of a cost element should be commensurate with its cost.

For example, it would be appropriate for an experienced reviewer looking at a cost element of less than $10,000 to judge the reasonableness of that cost based upon his or her knowledge and common sense. For a cost element in excess of $10,000, it would be more appropriate for the reviewer to compare the cost element with a third-party, fair-market price quotation for that cost element. Third-party price quotations may also be used by a reviewer to help determine the reasonableness of cost elements below $10,000 when the reviewer evaluates projects infrequently or if the reviewer is less experienced in cost estimations. If a reviewer does not use third-party price quotations to verify cost elements, then the reviewer would need to conduct a cost analysis using appropriate cost estimating manuals or services.

Particular attention should be paid to any cost element of the project that will be carried out through a non-arms-length transaction. A non-arms-length transaction can occur when the business entity receiving the CDBG assistance procures goods or services or acquires property from itself or from another party with whom there is a financial interest or family relationship. If abused, non-arms-length transactions misrepresent the true cost of the project.

Commitment of All Sources of Project Financing. A review of all proposed sources of funding for a project should be conducted to evaluate whether the project is financially feasible given the availability and commitment of other proposed funding sources. This review is necessary to ensure that time and effort is not wasted on assessing a proposal that is not able to proceed.

To the extent practicable, prior to the commitment of CDBG funds to the project, the project review should verify that: sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

Avoid Substitution of CDBG Funds for Non-Federal Financial Support. The proposed CDBG economic development project should be reviewed to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. This will help the grantee to make the most efficient use of its CDBG funds for economic development.

To reach this determination, the reviewer should conduct a financial underwriting analysis of the project, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project. The extent of this review should be appropriate for the size and complexity of the project and should use industry standards for similar projects, taking into account the unique factors of the project such as risk and location.

Because of the high cost of underwriting and processing loans, many private financial lenders may not finance commercial projects that are less than $100,000. Reviewers should familiarize themselves with the lending practices of the financial institutions in the community. If the project's total cost is one that would normally fall within the range that financial institutions participate, then the project review should determine the following:

1. Whether or not the participating business or other entity having an equity interest has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project; and

2. Whether or not the degree of equity participation is reasonable given general industry standards for rates of return on equity for similar projects with similar risks and given the financial capacity of the entrepreneur(s) to make additional financial investments.

If the project involves providing assistance to a microenterprise owned by a Targeted Income Group

(TIG) person, then the reviewer might only need to determine that non-Federal sources of financing are not available at terms appropriate for such financing in the community to serve the TIG entrepreneur.

Financial Feasibility of the Project. The public benefit a grantee expects to derive from the CDBG-assisted project (a separate eligibility requirement) will not materialize if the project is not financially feasible. To determine if there is a reasonable chance for the project's success, the grantee should evaluate the financial viability of the project. A project would be considered financially viable if all of the assumptions about the project's market share, sales levels, growth potential, projections of revenue, project expenses and debt service (including repayment of the CDBG assistance if appropriate) were determined to be realistic and met the project's break-even point at which all revenues are equal to all expenses. Generally speaking, an economic development project that does not reach this break-even point over time is not financially feasible. The following should be noted in this regard:

1. Some projects make provisions for a negative cash flow in the early years of the project while space is being leased up or sales volume built up, and the project's projections should take these factors into account and provide sources of financing for such negative cash flow; and

2. It is expected that a financially viable project will also project sufficient revenues to provide a reasonable return on equity investment. The reviewer should carefully examine any project that is not economically able to provide a reasonable return on equity investment. Under such circumstances, a business may be overstating its real equity investment and actual costs of the project, or it may be overstating some of the project's operating expenses in the expectation that the difference will be taken out as profits, or the business may be overly pessimistic in its market share and revenue projections and has downplayed its profits.

In addition to the financial underwriting reviews carried out earlier, the reviewer should evaluate the experience and capacity of the assisted business owners to manage an assisted business to achieve the projections. Based upon its analysis of these factors, the reviewer should identify those elements, if any, that pose the greatest risks contributing to the project's lack of financial feasibility.

Return on Equity Investment. To the extent practicable, the CDBG assisted activity should not provide more than a reasonable return on investment to the owner of the assisted activity. This will help ensure that the grantee is able to maximize the use of its CDBG funds for its economic development objectives. However, care should also be taken to avoid the situation where the owner is likely to receive too small a return on his/her investment, so that his/her motivation remains high to pursue the business with vigor. The amount, type and terms of the CDBG assistance should be adjusted to allow the owner a reasonable return on his/her investment given industry rates of return for that investment, local conditions, and the risk of the project.

Disbursement of CDBG Funds on a Pro Rata Basis. To the extent practicable, CDBG funds used to finance economic development activities should be disbursed on a pro rata basis with other funding sources. Grantees should be guided by the principle of not placing CDBG funds at significantly greater risk than non-CDBG funds. This will help avoid the situation where it is learned that a problem has developed that will block the completion of the project, even though all or most of the CDBG funds going in to the project have already been expended. When this happens, a grantee may be put in a position of having to provide additional financing to complete the project or watch the potential loss of its funds if the project is not able to be completed. When the grantee determines that it is not practicable to disburse CDBG funds on a pro rata basis, the grantee should consider taking other steps to safeguard CDBG funds in the event of a default, such as insisting on securitizing assets of the project.

Standards for Evaluating Public Benefit. Besides reviewing a project under these underwriting factors, the project must be reviewed to determine that at least a minimum level of public benefit is obtained from the expenditure of the CDBG funds. The minimum standards for each type of public benefit are as follows. The project must:

1. Lead to the creation or retention of at least one full-time equivalent job per $35,000 of CDBG funds used; or

2. Provide goods or services to residents of an area, such that the number of TIG persons residing in the areas served by the assisted business amounts to at least one TIG person per $350 of CDBG funds used.

SAMPLE

**FAIR SHARE ALLOCATION OF CBDG
GRANT (NO. 93-EDBG-251) AGREEMENT
(To Be Paid By Owner)**

This Agreement is made between the City of ______________ a California general law city ("City") and ___________ and _____________(collectively, "Owner").

RECITALS

A. City is the recipient of Community Development Block Grant No. 93-EDBG-251 (the "Grant") which includes a grant of $90,000 to cover the design and construction costs of public, off-site frontage improvements along a portion of Highway 29 required by California Department of Transportation ("CalTrans") and the City prior to permitting development of three parcels of adjacent property. The work will include creation of deceleration and acceleration lanes through grading, installation of curbs and gutters, and pavement widening, as required by CalTrans, and installation of City public improvements including, storm drains, handicap ramps, bicycle lanes, street lights and miscellaneous other public improvements (the "Public Improvements"). The Public Improvements are expected to be completed by February 1996.

B. Owner is the owner of one of three parcels of property which will benefit from the Public Improvements to be funded by the Grant and which would be unable to obtain entitlements to develop without such Public Improvements. Owner's parcel consists of approximately 5.18 acres and is identified as Napa County Assessor's Parcel No. 59-072-005 (the "Property").

C. The terms and conditions of the Grant require that City and Owner enter into an agreement fixing the fair share allocation of the Grant to be paid by Owner and conforming to State community development block grant requirements for job creation for persons with family income less than or equivalent to eighty percent (80%) of the median income for Napa County (the 'Targeted Income Group") as shown in Title 25, California Code of Regulations section 6932.

D. In recognition of the benefits Owner's property will receive from the Public Improvements to be funded by the Grant and as required by the terms and conditions of the Grant, the parties hereto wish to fix and determine the job creation and reporting requirements of Owner and the fair share allocation of the Grant to be allocated to the Owner and to be reimbursed by Owner to City in accord with the terms of this Agreement.

AGREEMENT

1. Fair Share Allocation. In consideration of the benefits Owner's property will receive from the Public Improvements to be funded by the Grant, including enhancement of

development potential and improved access and egress to and from the Property, Owner agrees that the share of the Grant properly allocated to Owner based on the percentage of acreage owned by Owner in relation to the total amount of acreage in the three parcels benefiting from the Public Improvements is the sum of Fifty-One Thousand One Hundred Twenty Dollars ($51,120.00) (hereinafter, "Owner's Fair Share Allocation").

2. Payment. The Owner shall pay Owner's Fair Share Allocation to City in five installments over a five-year period. The first installment shall be due and payable on a date one year from the date of issuance of a building permit authorizing construction to commence on the property and shall be in an amount equal to twenty percent (20%) of Owner's Fair Share Allocation. Thereafter, the balance of the fair share allocation shall be paid in four installments each due and payable on the anniversary date of the issuance of the building permit and in an amount equal to twenty percent (20%) of Owner's Fair Share Allocation, plus interest on the total outstanding balance of Owner's Fair Share Allocation, which shall accrue at a rate of five percent (5%) per annum. Interest shall begin to accrue on the balance of Owner's Fair Share Allocation on the date that the first installment is due and payable.

3. Performance Security. Prior to issuance of a building permit, Owner shall furnish one of the following as security for performance of Owner's obligations under this Agreement:

a. A surety bond in the amount of Fifty One Thousand One Hundred Twenty Dollars ($51,120.00) which is equal to one hundred percent (100%) of the Owner's Fair Share Allocation, as security for the faithful performance of all the provisions of this Agreement. This bond shall remain in effect until such time as the last installment of the Owner's Fair Share Allocation is paid to City.

b. Irrevocable letters of credit, cash deposits, savings account(s) or certificates) payable to City in form satisfactory to City and equivalent to said surety bonds. All legal expenses incurred by City in reviewing and approving said bond equivalents shall be paid by Owner. Such bond equivalents shall remain in effect until such time as the last installment of the Owner's Fair Share Allocation is paid to City.

4. Job Creation. In further consideration of the benefits Owner's -property will received from the Public Improvements to be funded by the Grant, to the extent that the Property is developed and business is operating on the Property within a period of one year following completion of the Public Improvements, Owner agrees to comply with the State of California community development block grant ("CBDG") requirements for job creation for the Targeted Income Group and to provide City with information it requests concerning the jobs created or retained by that business so that the City may comply with its job reporting obligations under the Grant. The State CBDG requirements are that fifty-one percent (51%) of the jobs created by any business which commences operations on the Property within one year of the completion of the Public Improvements must be filled by individuals in the Targeted Income Group. Owner agrees to comply with the State's requirements that 100% of the jobholders be screened for income eligibility and maintain records documenting income eligibility for review by the City, State or U.S. Department of Housing and Urban Development. The owner may enter into an income-

screening and referral source contract with the local job training agency to accomplish these tasks.

5. Default, Remedies. In the event that Owner fails to make an installment payment when due, or fails to comply with the job reporting requirements specified in Section 3 above, City shall provide Owner written notice of such default. Owner shall have fifteen days to cure such default. If Owner fails to cure such default, City may, in its sole discretion, declare the entire balance of Owner's Fair Share Allocation, plus applicable interest, due and payable and pursue any and all available legal remedies to recover such amount and enforce the job reporting requirements of Section 3 above.

6. Covenants Run With The Land. All of the terms, provisions, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, and all other persons or entities acquiring all or any portion of the Property, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall constitute covenants running with Owner's Property pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code. Owner' agrees that the covenant to pay the Owner's Fair Share Allocation of the cost of the off-site Public Improvements is for the benefit of the Property and is a burden upon such Property, runs with the Property, and is binding upon each successive owner during ownership of such Property, or any portion thereof, and each party having any interest in the Property derived in any manner until such time as this Agreement terminates as provided in Section 6 of this Agreement.

7. Termination of Agreement. This Agreement shall terminate upon receipt by the City of Owner's final installment of Owner's Fair Share Allocation of the cost of the Public Improvements, plus applicable interest. Upon receipt of such payment, City shall record with the Office of the Napa County Recorder a document indicating that the Owner has fulfilled its obligations under this Agreement.

8. Entire Agreement, Amendment. This Agreement, contains the entire Agreement of the parties and supersedes all prior negotiations, correspondence, understandings and agreements by or between the parties regarding the subject matter hereof. This Agreement may not be amended except upon the mutual written consent of both parties.

9. Waiver. Any waiver any time by any party of its rights with respect to default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.

10. Governing Law. This Agreement shall be governed by the laws of the State of California and the rights and obligations of the parties hereto shall be construed and enforced in accordance with the laws of the State of California.

11. Attorneys' Fees. In the event of any legal or equitable proceedings for enforcement of any of the terms of this Agreement, or any alleged dispute, breach of, default or misrepresentations in connection with any provision of the Agreement, the prevailing party in such action, or the nondismissing party where the dismissal occurs other than by a reason of a

settlement, shall be entitled to recover its reasonable costs and expenses including without limitation, reasonable attorneys' fees and costs paid or incurred in good faith.

12. Notice. Any notice relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or four (4) business days after deposit in the United States mail, certified or registered, return receipt requested with postage prepaid addressed as follows:

To City:

City of ____________
____Elliott Drive
_______California, 94589
Attention: City Manager

To Owner:
Mr. _________
Ms. _________
____ Veni Lane
Suisun, California 94585

13. Effective Date. This a Agreement shall become effective upon the date the City is authorized to draw upon the Grant to fund the construction of the Public Improvements and shall remain in full force and effect until terminated.

IN WITNESS WHEREOF, the parties have executed this Agreement with the intent to be bound thereby as of the effective date set forth above.

("City)
City of __________________

By: _____________________
Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

By: _____________________
City Attorney

("Owner")

CDBGGMM.9/99

SAMPLE

LOAN AGREEMENT

This agreement is entered into this ______ day of __________________________, 19__, by and between Oak Tree County, hereinafter referred to as "Lender", and ABC Systems Inc., hereinafter referred to as "Borrower", and Borrower agrees to borrow from Lender the sum of Three Hundred Thousand Dollars ($300,000) which shall be used for the purchase and installation of machinery and equipment to be located at the project site more particularly described in the attached Exhibit "A" incorporated herein by reference and for general working capital for the operation. Borrower agrees to execute a promissory note to Lender, evidencing said indebtedness, in the original principal amount of Three Hundred Thousand dollars ($300,000.00). Said promissory note shall provide for interest on the amount of the unpaid principal balance at the rate of _______ percent (___) per annum on the funds loaned, from the time of receipt by Borrower until such time as all loan funds have been fully repaid, provided however, Borrower shall not be obligated to make any payments of principal and interest on said funds for a period of ____ months from the date on which Borrower receives the first disbursement of loan funds from Lender of Lenders' designee. Interest earned by Lender during the first ____ months of the loan term shall be accrued for said _____ (____) month period at which time any accrued interest shall be added to the original principal balance of the loan as evidenced by the promissory note and amortized over the remaining term of the loan. Commencing with the first day of the ______ (__) month of the loan term, Borrower shall make seventy-two (72) equal monthly payments sufficient to fully repay the original principal amount of the loan plus any accrued interest. Payments shall be credited first to accrued interest and then to principal. The promissory note shall be secured as set forth in Paragraph Two (2).

2. SECURITY: (a) The promissory note will be secured by a (First, Second, Third) Deed of Trust on the real property and improvements on that certain real property described more particularly in the attached Exhibit "A" incorporated herein by reference.

(b) Borrower shall execute a Security Agreement and UCC-1 filing in a form satisfactory to Lender and Lender's counsel covering all furniture, fixtures, equipment, and inventory. Within twenty (20) days of the purchase of the furniture, fixtures, and equipment and fixtures provided for in this agreement, Borrower will furnish Lender with a complete and detailed list specifically identifying said items and shall cooperate fully in the filing of a new UCC with said list attached. Borrower covenants not to remove this equipment or permit any other encumbrances or liens to be placed against said items during the term of this loan. Said UCC-1 filing form shall be signed prior to the disbursement of any loan funds and shall be signed prior to the disbursement of any loan funds and shall be deposited with the title insurance company handling this transaction accompanied by Borrowers' written instructions to file said agreement with the Secretary of State upon submission by Borrower to it of the detailed listing of collateral within the prescribed twenty (20) day period.

(c) Personal guarantee of the loan in a form satisfactory to Lender and Lenders' counsel.

3. DUE ON SALE: The Promissory Note and Deed of Trust securing the loan shall provide that the full balance of the Promissory Note shall become immediately due and payable upon sale, transfer, assignment or lease of the real property and improvements or of Borrower's interest therein.

4. CONSTRUCTION OF BUILDING: Borrower agrees to build________________________
____
in accordance with plans and specifications prepared by ___________________________________
____
dated ______________, and titled ____________________________________, as they may be amended from time to time, and approved by ____, acting in its official capacity of Building Inspector.

5. DISBURSEMENT OF FUNDS: Funds for the purchase of equipment, furniture, and fixtures shall be disbursed by Lender only upon presentation of invoices or paid receipts, evidencing materials, services, or labor provided in connection with the project approved by Lender and the State of California. Disbursements made for working capital, using the borrowed funds, by Borrower shall be in accordance with State of California Department of Housing and Community Development regulations.

6. ADDITIONAL FUNDING: Prior to disbursement of any of the funds, Borrower shall provide to Lender and the Department of Housing and Community Development (HCD) satisfactory evidence that Borrower has obtained additional funding in a sum determined necessary to complete the construction of the project.

7. RECORD KEEPING: Borrower will comply with all of the following conditions concerning the records of this project:

a. All records concerning the construction, including invoices, receipt and contracts will be kept in conformity with the State of California Department of Housing and Community Development regulations.

b. All records pertaining to the construction and the receipts and disbursement of loaned funds shall be retained for a period of not less than three (3) years from the completion of construction.

c. If so directed by Lender or HCD, Borrower shall deliver to Lender or HCD all records, accounts, documentation and other relevant materials pertaining to the receipt and disbursement of the loaned funds.

d. All of Borrower's records pertaining to this construction shall be accessible and available for inspection or audit by Lender or HCD, at reasonable times and upon reasonable notice for a period of three years after final disbursement of the loan funds, or completion of construction, whichever last occurs.

8. INSPECTION: Lender and HCD shall have the right to inspect any work performed in connection with the Loan to verify that the work has been done in accordance with applicable Federal, State and Local requirements and in accordance with this agreement.

9. CDBG REQUIREMENTS: Borrower agrees to fully perform the work described in the economic development application submitted to the State of California, Department of Housing and Community Development for a Community Development Block Grant, including the provision of jobs as set forth in the Employment Plan of that application. Borrower agrees to insure that at least 51% of all jobs created or retained by the CDBG-assisted project shall be filled by members of the CDBG program's targeted income group (TIG).

10. REPRESENTATION AND WARRANTIES: Borrower makes the following representations and warranties:

a. There are not legal actions, suits, or proceedings pending or, to the knowledge of Borrower, threatened against Borrower.

b. Borrower is not in default of any obligation, bond, debenture, note or other evidence of indebtedness.

c. Borrower has filed all tax returns which are required to be filed, and has paid, or has made provision for the payment of all taxes, which are due by Borrower. Not tax liability has been asserted by the IRS, or any other taxing authority, materially in excess of those already provided for, and Borrower knows of no basis for any such deficiency assessment.

d. Borrower certifies that there has been no adverse change, since the date of loan application, in the financial condition, organization, operation, business prospects, fixed properties, or personnel of the Borrower.

e. Borrower will not permit, without the prior written consent of Lender, any material change in its ownership structure, control or operation, including but not limited to, a merger or consolidation with any other person, firm or corporation; significant issuance of any shares of its capital stock; changing the nature of its business; or a substantial distribution, liquidation or other disposal of Borrower's assets to its shareholders.

11. INSURANCE: Borrower agrees to maintain course of construction insurance on the work of improvement, and thereafter until payment in full of the loan, covering fire and extended coverage, including vandalism, in the amount of at least the fair market value of the improvements, and naming Lender as beneficiary and loss payee in a form acceptable to Lender and Lenders' counsel.

ALTA title policy with endorsements 100, 111.5 and 116 and any other endorsements Lender requires after review of the preliminary title report and copies of all exceptions to title.

12. TAXES: Borrower agrees to pay, prior to delinquency, all real property taxes and

assessments against the real property and improvements except that Borrower shall not be required to pay any such tax, assessment or governmental charge, which is being contested by it in good faith and by appropriate proceedings.

13. HAZARDOUS SUBSTANCES: Subject to final review of Lenders' counsel provisions shall be included in the loan documents providing among other things that:

a. Neither Borrower nor any tenant of space in the property will generate, treat, store, handle, release, dispose of or otherwise deal with hazardous substances on the property, and

b. The property is in compliance with, and Borrower will comply with, all applicable laws, regulations, ordinances, licenses, permits, rules, and building codes pertaining to hazardous substances, and

c. Borrower does not know or believe, or have reason to know or believe, that hazardous substances are now, or have been, generated, treated, stored, handled disposed of, released or otherwise located on the property.

d. the Borrower shall indemnify and hold Lender harmless from all liability, claims, penalties, fines, losses, damages and expenses of any kind, including, without limitation, cleanup costs and reasonable attorneys fees, incurred by Lender as a result of Borrower's breach of the provisions of the Deed of Trust, as a result of Borrower's breach of warranty regarding hazardous substances, or as a result of the presence of hazardous substances on the property. The Indemnification Agreement is to be prepared by attorneys for Lender.

14. DEFAULT: At the option of the Lender the occurrence of any of the following events shall constitute a default.

a. Borrower shall fail to make any payment of principal or interest or any other amounts due Lender hereunder in connection with the issuance or administration of the loan proceeds when due and such failure shall continue for five days after notice thereof from Lender.

b. Borrower shall (a) fail to make any payment of any Indebtedness when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace or cure period, if any, specified in the agreement or instrument relating to such Indebtedness or (b) otherwise materially breach any agreement or instrument relating to any Indebtedness, where the effect of such material breach is to accelerate, or to permit the acceleration of, the maturity of any Indebtedness.

c. Any material representative or material warranty made by Borrower herein in the First Deed of Trust, the Second Deed of Trust, Third Deed of Trust, Security Agreement, or Employment Plan is breached or is false or misleading in any material respect, or any schedule, certificate, financial statement, report, notice or other writing furnished by

Borrower to Lender is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

d. Borrower shall fail to perform any covenant, condition, or agreement set forth herein, or in any other Loan Document, and such failure shall continue for a period of 30 days after notice thereof (which notice shall specify in reasonable detail the nature of such failure) from Lender.

e. Borrower voluntarily suspends the transaction of business or there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged or stayed within 60 days.

f. Borrower becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors, or there shall occur a material adverse change in the financial condition of Borrower.

g. Borrower files or there is filed against Borrower a petition to have Borrower adjudicated a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Borrower, the same is dismissed or stayed within 60 days.

h. Borrower applies for or consents to the appointment of a receiver, trustee or conservator for any portion of Borrower's property, or such appointment is made without Borrower's consent and is not vacated within 30 day.

In the event of default, Lender may immediately call the note due and payable and enforce its remedies under the law.

15. OTHER DOCUMENTS: Lender may require and Borrower agrees to execute such other documents as may be required by Lender in its' sole discretion in order to comply with applicable State and Federal regulations governing the loan proceeds and prudent lending practices.

16. COLLECTION AGENT: Borrower hereby appoints Lender as its' agent to appoint a collection agent to provide loan servicing in accordance with this agreement and other loan documents. Lender may remove or replace the loan agent in its' sole discretion. Lender shall provide or cause to be provided notice to Borrower of a change in the collection agent.

17. WAIVER: No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof.

18. ATTORNEY'S FEES: If any party to this agreement becomes a party to any litigation concerning this loan or the security for this loan, by reason of any act or omission of any other party of its' authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the part that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys' fees and court costs incurred by it in the litigation.

If either party commences an action against the other party arising out of or in connection with this loan, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

19. HEIRS, SUCCESSORS AND ASSIGNS: This agreement shall be binding upon, and inure to the benefit of the heirs, successors and assigns of the parties to this agreement.

20. AMENDMENTS: Any amendments or modifications to this agreement must be in writing and signed by both parties.

ABC Systems, Inc.	Oak Tree County
By: ______________________________	By: ____________________
Bob Business Person President	

LOAN AGREEMENT - SUGGESTED OUTLINE

I. Parties

A. Private Lender(s)
Name
Address
Phone Number

B. City or County
Address
Phone Number

C. Borrower
Address
Phone Number

II. Loan Description

- Amount of the loan.
- Terms (length of loan, interest rate, equity position, total and targeted income group job goals, etc.).
- Collateral (including position and prior lien holders).
- Payment amount and schedule.
- Repayment policy.
- MUST INCLUDE SPECIFIC LANGUAGE THAT MAKES THE LOAN DUE AND PAYABLE UPON SALE OR REFINANCE OR CHANGE IN MAJORITY OWNERSHIP.

III. Conditions

A. Statement of Loan Purpose:
- Use of Proceeds.
- Role of parties.
- Restrictions on fund users.
- Property information.
- Must include a non-monetary default clause that makes the loan due and payable if there is unsatisfactory job creation.

B. Other Loans/Sources of Funds:

- Name, address, phone.
- Loan amount.
- Terms and conditions.
- Collateral.

- Use of proceeds

C. Special Terms and Conditions:

- Equal opportunity policy
- Construction/contractor requirements (e.g., final plans and specification, insurance, Federal prevailing wages (Davis-Bacon wages) bonding, etc.
- Inspection, monitoring and reporting requirements.

D. Other Conditions:

- Borrower must execute the note and loan agreement.
- Borrower must execute and file all security agreements.
- Principals must provide personal guarantees, if required.
- Borrower must provide title insurance, if required.
- Borrower must obtain all necessary governmental and other approvals.

IV. Representations and Warranties

The borrower must make several claims regarding its legal authority to borrow and conditions existing at the time of the loan. This includes:

- The corporation or partnership is a duly organized entity.
- The borrower is authorized to borrow money (Corporate Resolution to Borrow, etc.).
- The borrower is not presently involved in any legal suits of material nature.
- The borrower is not in default on any other obligations at the time of loan closing.
- The borrower has filed tax returns and paid taxes accordingly as required.
- The borrower has not suffered any adverse change in its operation since applying for the loan.

V. Covenants

The business or developer must pledge to do and to prevent certain things.

A. Affirmative Covenants:

- Pay CDBG loan punctually.
- Pay other loans punctually.
- Maintain, insure, and pay all taxes on the property used as collateral. Insurance will include hazard, liability, workman's compensation, and flood insurance (if appropriate).
- Provide additional equity if there are cost overruns.
- Maintain, insure, and pay all taxes on the property used as collateral. Insurance will include hazard, liability, workman's compensation, and flood insurance (if appropriate).

- Maintain its legal existence.
- Notify jurisdiction of any default.
- Maintain all collateral property or equipment in good condition.
- Provide equity and other borrowed funds into project equal to that stated in CDBG grant application.

B. Negative Covenants:

- Will not encumber or sell or move to a different site any assets used as collateral.
- Will not change ownership composition.

VI. Events of Default

The loan agreement will list the conditions (events) which will constitute a default in the agreement. Events of default typically include the following:

- Non-payment of CDBG or other loans in the project.
- Incorrect representation.
- Default in any covenant.
- Judgments in excess of liability insurance.
- Failure to create jobs, principally for the targeted income group.

VII. Miscellaneous

The miscellaneous provisions provide for:

- Making amendments to the agreement.
- Waiving rights and notices.
- Assigning the note and security interests.

VIII. Assurances

By signing the loan agreement, the parties accept the terms and conditions under which this loan is being made.

LOAN FILE - SUGGESTED OUTLINE

Two separate loan files must be maintained. There should be an original documents file, a legal file, which holds all of the original loan documentation, and a credit file which has the day-to-day administrative records of the loan. The legal file should be secured in a fireproof safe. At a minimum the legal file should include:

1. Note
2. Loan Agreement
3. Mortgage
4. General Security Agreement
5. Personal Guaranty
6. Corporate Guaranty
7. Subordination Agreement
8. Life Insurance Policy and Assignment
9. Hazard Insurance Policy and Assignment
10. General Resolution
11. Certificate of Secretary
12. Opinion of Counsel
13. Intercreditor Agreement

LOAN FILE DOCUMENTS (DESCRIPTION)

1. Note

   The note is usually a one-page document, the instrument which obligates the borrower to the debt. It details the amount of the loan, the rate of interest and the repayment terms as well as the remedies of the lender with respect to the collateral and guarantees securing the loan in the event of default.

2. Loan Agreement

   The loan agreement is created to supplement the note. It details the specific conditions of the lending such as the disbursements, payment obligations, covenants outlining financial disclosure requirements, a description of the collateral and guarantees securing the loan, other special conditions of the loan, such as any regulatory obligations "e.g., meeting Davis-Bacon Wage Guidelines", and also describes the remedies you, as the lender, have with respect to defaults in payments and violations of any of the loan covenants.

3. Deed of Trust

   If a loan is secured by real property, a Deed of Trust mortgage instrument detailing the specifics of the property must be prepared and recorded in the county in which the property is located. This prevents the resale of the property without your notification. If the Deed of Trust is not properly prepared and recorded your lien may become invalid, thereby losing the collateral which secures your loan.

4. General Security Agreement and UCC Filings

   A General Security Agreement and UCC filing is made on all other collateral securing the loan in order to protect the lender against the collateral by another party. The General Security Agreement obligates the borrower to the lender. The UCC filing provides notice to all creditors that the borrower has an obligation to you secured by collateral on which you have first claim. You must complete the UCC filing in your locality, county and state simultaneously in order for the filing to be effective.

5. Personal Guarantees

   The endorser of a personal guarantee becomes personally liable for the obligation. Remember that often the legal borrower is usually a corporation, not the principals of the company, and unless you obtain a personal guarantee you have no recourse against the principals.

6. Corporate Guarantees

   Corporate guarantees are obtained when you require the endorsement of another corporation as a condition of the loan. Guarantees should be accompanied by Certificate of Secretary (see

No. 11) from the corporate guarantor.

7. Subordination Agreement

The Subordination Agreement is required when, as a condition of your loan, you demand that the repayment of a previously existing debt be subordinate to the payment of your loan. If you do not want any payment, principal and interest, to be paid on this loan, you must specify it in the agreement otherwise you might find a deferral of principal but not of interest payment.

8. Life Insurance Policy and Assignment

If you require a life insurance policy on any of the principals of the company as collateral on your loan, it must be accompanied by an assignment. An assignment is an agreement between you and the borrower which specifies the type of life insurance coverage required to secure the loan and names you as beneficiary. The assignment form is usually provided by the insurance company issuing the policy and who must record the assignment. Once a policy is assigned the insurance company will send you notices of lapses in premium payments.

9. Hazard Insurance Policy and Assignment

The same procedure for life insurance policy is followed on all fire, theft and flood insurance policies which covers the collateral securing your loan.

10. General Resolution

A general Resolution describes who is empowered to borrow on behalf of the corporation.

11. Certificate of Secretary

A Certificate of Secretary affirms that the corporation has agreed to the loan.

12. Opinion of Counsel

The Opinion of Counsel verifies that the company is a legal entity empowered to borrow, and that there are no legal actions or suits pending against the company.

13. Intercreditor Agreement

An Intercreditor Agreement is obtained when there are two or more lenders with claims against the same collateral as in the case of a senior and second mortgage lender. This agreement details the obligations of the two to each other with respect to attempts to liquidate the asset securing the loan without the other's consent.

In any loan closing you should have your own legal counsel representing your interest as lender and being well versed in the legal lending requirements in your state. Once the loan is closed it is your responsibility to protect the original closing documents from any destruction or mutilation which could jeopardize your ability to liquidate your collateral or move against a guarantee should it become necessary. It is improper to store the original documents in the credit file which is used in the everyday administration of the loan.

The credit file should be organized in a chronological manner with separate tabs for financial reports and correspondence, credit checks, personal financial reports and other recordkeeping functions.

14. Credit Memorandum

Description and analysis of proposed project that incorporates the CDBG program's underwriting guidelines (see earlier in this Section VI).

MANAGEMENT INFORMATION SYSTEM (MIS)

Good credit administration demands that you develop a good reporting system that gives you information on the payment status of your loans and monitors the quality of your portfolio.

A good reporting system can help you set achievable goals for the growth of your portfolio, the quality of your loans, and it can help you improve the collection of your delinquencies and help you manage workloads. The reporting system becomes an effective management tool if, at a minimum, it provides you with the information provided in the sample reports which follow. These reports should be produced on a periodic basis, reviewed and compared to the previous month's activity. They provide a basic format and should be modified to suit your loan program's particular needs.

- Fund Balance Report

  Provides a monthly summary of beginning fund balance, the principal and interest recaptured during the month, disbursements made during the month, funds committed but not yet disbursed, to net out to the available fund balance at month end.

- Portfolio Summary Report

  Provides a summary of the total loans in process, loans authorized/committed to but not disbursed, the current loans outstanding and the loan losses.

- Current Portfolio Summary

  Provides a listing of all outstanding loans, the latest loan balance, last payment date, identifies if a loan is current or delinquent, the date the annual review is due, the loan classification and the loan officer responsible for the loan. It also provides totals for number of loans outstanding, amount originally booked and the outstanding balance.

- Undisbursed Commitments

  Provides a listing of all loans which have been approved but undisbursed as of the date of the report.

- In Process Deals

  Provides a listing of the proposals which are in house and in the developmental stage.

- Loss Portfolio Report

  Provides a list of all loans which have been classified as uncollectible.

- Delinquent Loan Summary

  Highlights all loans in the current summary which are delinquent in order to focus management attention on the problem.

- Classified Loan Summary

  Sorts the current portfolio summary by classified loan status to provide a picture of the quality of the portfolio.

- Loan Officer Summary

  Sorts the current portfolio, the authorized but undisbursed and the in process deals by loan officer. This allows management work flows and monitor performance more effectively.

- Loan History

  an individual loan history of each loan is maintained which details the original amortization schedule and the current activity on the loan, including latest loan payment, the portion of the payment that went to interest and principal and the remaining outstanding principal balance as of the close of the report.

- Tickler File

  Provides a listing of loans in the current portfolio and the deadlines for such information as due dates of receipt of financial statements, review date, insurance premium payments which borrower must make to ensure your collateral coverage. This file can be sorted by month to highlight those times in chronological order.

SAMPLE

SELF-CERTIFICATION FORM FOR FAMILY INCOME

Date:________________

City/County__________________________

Community Development Block Grant request for fiscal year_____________________

The information you provide regarding your family income will be part of your request for State subsidy funds which will assist the economic development of (City/County)____________________. The information will be confidential, but may require verification.

Please indicate by circling the number that represents the number of persons in your family as well as the approximate income prior to being hired.

Please indicate whether your income is over or below the amounts noted below as it corresponds to the number of persons in your family. If your stay is seasonal and your permanent home is located at a different place, use the number of family members who reside at the permanent residence.

FAMILY SIZE	**INCOME**	**OVER**	**UNDER**
1	$_________	___________	__________
2	$_________	___________	__________
3	$_________	___________	__________
4	$_________	___________	__________
5	$_________	___________	__________
6	$_________	___________	__________
7	$_________	___________	__________
8	$_________	___________	__________

How many hours do you work each month?______________________

Gender of Job Holder: Ethnicity of Job Holder:

___Male ___Female __White __Black __Hispanic __Asian

__American Indian __Pacific Islander

Status of Job Holder:

Yes No
___ ___ Over 62 Years Old
___ ___ Handicapped

Income Verification

I certify this income information is correct and I understand that the information I have provided on my family income is subject to verification by authorized representatives of the City/County of _______________, the State of California Department of Housing and Community Development and the U.S. Department of Housing and Urban Development.

Signature:______________________________ Date:_____________________

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Name:________________________________ Home Address:____________________

PÁGINA DE AUTO-DECLARACIÓN
PARA INGRESOS DE LA FAMILIA

Fecha: ______________

Ciudad/Condado: ____________________

Solicitud de CDBG para año fiscal: ____________

La informacion de ingresos de su familia que usted provea, sera parte de la solicitud preparada por la (Ciudad/Condado) ____________________. Dicha solicitud es para recivir fundos de el Estado de California, los cuales se usaran en el desarrollo economico de la (Ciudad/Condado) ____________________. Su informacion es confidencial, pero la Ciudad puede verificarla.

Por favor marque en la columna apropiada, el numero de personas que residen con usted y el ingreso aproximado. En las otras dos columnas indique si sus ingresos son altos o bajos en relacion con el numero de personas que residen con usted.

Si el lugar donde reside actualmente es temporal, por favor use el numero de personas que viven en su residencia (hogar) permanente.

Nº DE PERSONAS	INGRESOS	MÁS	MENOS
1	$________	_______	_______
2	$________	_______	_______
3	$________	_______	_______
4	$________	_______	_______
5	$________	_______	_______
6	$________	_______	_______
7	$________	_______	_______
8	$________	_______	_______

Cuantas horas trabaja usted por mes? ______________________

Datos generales de el empleado:

_____ Masculino _____ Femenino

____ Caucasiano ____ Negro ____ Hispano-Americano
____ Asiano ____ Nativo de Alaska ____ Isleño de Pacífico
____ Americano Nativo

____ Mayor de 62 anos? ____ Discapacitado

Verificación de Ingreso

Yo declaro que esta información de ingreso es correcta, y entiendo que la información de ingresos que he proveído es sujeta a verificación por un representante de la Ciudad/Condado Estado de California Departamento de Viviendas y Desarrollo de la Communidad y U.S. Department of Housing and Urban Development.

Firma: ______________________________ Fecha: __________________

Nombre: _____________________________ Seña: ______________________

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(Nombre Escrita)

INSTRUCTIONS FOR USING SELF-CERTIFICATION FORMS

The purpose of the self-certification form is to determine a job applicant's total family income six months prior to his/her start date at the CDBG assisted business. To be valid, the self-certification must be signed and dated by the job applicant. This form should be used in job retention projects to confirm that at least 51 percent of the jobs retained are filled by targeted income group households. It may also be used in job creation projects when there is no job training agency to income screen job applicants. A representative sampling of actual incomes should be verified by the grantee or grantee's contractor to ensure the reliability of the data, as soon as possible after the CDBG assistance is provided.

Instructions:

The jurisdiction or the business should complete the income column of the certification form, including the current HUD income limits by family size.

The employee should complete the remainder of the certification form, and the signature block. The employee is to circle the family size, and indicate whether the family income is over or under the HUD indicated figure.

- Use HUD Income Eligibility Limits by County.
- Determine the job applicant's family size.
- Look at the Targeted Income Column for households earning 80 percent of the County's median income.
- If the applicant's family income is above this figure for his/her family size the applicant is not in the targeted income group.
- If the applicant's family income is below this figure for his/her family size the applicant is in the targeted income group.
- Have applicant sign certification.

SAMPLE

SMALL BUSINESS, MINORITY, WOMEN OR DISABLED VETERAN- OWNED BUSINESSES

Quarter: ____________________
Date Prepared: ____________________
Prepared By: ____________________

Total Number of Subcontracts: ____________________
Total Number of Small Business Contracts: ____________________
Total Number of Minority Owned Businesses: ____________________
Total Number of Women-Owned Businesses: ____________________
Total Number of Disabled Veteran Owned Businesses: ____________________

List of Subcontractors:

Name	Type of Contract	Dollar Amount	Minority Owned 51% owned (yes/no)	Women Owned 51% owned (yes/no)	Disabled Veteran Owned 51% owned (yes/no)

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